

In Re:

(MDL No. 1760)

No. 3:06-MD-1760

Judge Campbell/Brown

The Magistrate Judge has reviewed each of the cases in Group 2. As for the three cases mentioned above, a review of the record reveals that dispositive motions are pending in both *Nygren* and *Clark*. (MDL Docs. 6764, 7047; Related Cases 23, 33) Therefore, *Nygren* and *Clark* are not ripe for suggestion of remand. As for *Liebttag*, NPC argues that Mr. Liebttag, who apparently resides in Israel much of the year, has not been made available for deposition even though he allegedly has been back in this country since September 1, 2013. (MDL Doc. 7094, p. 1; Related Case 28) Counsel representing Mr. Liebttag does not dispute NPC's claim that Mr. Liebttag has been back in the country since September 1, 2013, or that he has not made Mr. Liebttag available to be deposed.

(MDL Doc. 7142, p. 1; Related Case 29) Counsel provides no reason, good or otherwise, why Mr. Liebttag cannot be deposed in accordance with the court's prior orders. Rather, counsel is of the view that Mr. Liebttag should be deposed following remand.

Mr. Liebttag's case will not be recommended for suggestion of remanded until after fact discovery has concluded. Counsel SHALL coordinate with NPC to arrange a date for Mr. Liebttag to be deposed. Counsel is forewarned that failure to comply with this order with respect to Mr. Liebttag's deposition may result in a recommendation that this case be dismissed for failure to prosecute and/or for failure to comply with the orders of the court, and/or appropriate sanctions imposed.

In addition to the three cases above, the Magistrate Judge has determined that the following additional eight Group 2 cases still have actions pending: 3:07-CV-00239 (*Begley*); 3:07-CV-00395 (*Grant*); 3:07-CV-00470 (*Feller*); 3:07-CV-00536 (*McBride*); 3:07-CV-00538 (*Sanderson*); 3:07-CV-01072 (*Ross*); 3:07-CV-01182 (*Caruthers, et al.*); 3:08-CV-00020 (*Nerzig, et al.*); 3:08-CV-00907 (*Wood*). Therefore, none of these eight cases are ripe for suggestion of remand at this time.

In addition to the cases discussed above, six cases have been moved from Group 2 to Group 3 by agreement of the parties, and thirteen cases have been dismissed either for failure to prosecute, or by stipulation of the parties. Therefore, of the original 125 cases in Group 2, the ninety-five cases listed at Exhibit 1 are RECOMMENDED for suggestion of remand.

It is so ORDERED.

ENTERED this 19th day of November, 2013.

/s/Joe B. Brown
Joe B. Brown
United States Magistrate Judge